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Letter dated 17 July 2012 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council

On 26 and 27 June 2012, the Permanent Mission of the Federal Republic of Germany to the United Nations hosted a seminar entitled "The future of targeted sanctions one year after splitting the 1267 (1999) regime", to which all Member States had been invited.

I am therefore pleased to submit, herewith, for the consideration of the Security Council, the conclusions drawn from that seminar, whose main objective was to take stock and to analyse the performance and possible improvements in view of the upcoming renewal of the mandates of the 1267 (1999)/1989 (2011) and 1988 (2011) Committees (see annex).

I should be grateful if the present letter and its annex could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**
Ambassador
Permanent Representative

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Annex to the letter dated 17 July 2012 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council

The future of targeted sanctions one year after splitting the 1267 (1999) regime

"The 1267 (1999)/1989 (2011) and 1988 (2011) regimes: current status and future challenges"

Permanent Mission of Germany, 26 and 27 June 2012

Chairman's conclusions

The Permanent Mission of Germany to the United Nations hosted a seminar on 26 and 27 June 2012 to discuss the future of targeted sanctions one year after the Security Council decided to split the 1267 (1999) Al-Qaida and Taliban sanctions regime and adopt resolutions 1988 (2011) and 1989 (2011). The main objective of this seminar was to take stock as well as to analyse the performance and the possible improvements in view of the renewal of the mandates of the 1267 (1999)/1989 (2011) and 1988 (2011) Committees in December 2012.

Guido Steinberg, from the German Institute for International and Security Affairs (Berlin) and Richard Barrett, Coordinator of the 1267 (1999)/1989 (2011) and 1988 (2011) monitoring team (New York) presented their analysis of the evolving threat posed by Al-Qaida networks. Adam Szubin, Director of Foreign Assets Control, United States Department of the Treasury (Washington, D.C.) shared his views on how the implementation of the Al-Qaida sanctions could be further improved. Against this backdrop, participants discussed options for further enhancing the Al-Qaida sanctions regime.

In addition, Thomas Zahneisen, Deputy Ambassador of Germany to Afghanistan, reported on the Afghan perception of the 1988 (2011) Taliban sanctions regime. His remarks were further enriched by comments from Youssof Ghafoorzai of the Permanent Mission of Afghanistan to the United Nations.

In the framework of a dinner debate on 27 June 2012, Judge Kimberly Prost, Ombudsperson of the Al-Qaida Sanctions Committee, and Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, discussed standards of review with reference to current listings as well as the scope of the mandate of the Office for an Ombudsperson with regard to other sanctions regimes.

The conclusions of the Chairperson of the seminar, Dr. Peter Wittig, Germany's Permanent Representative to the United Nations and current Chairman of the 1267 (1999)/1989 (2011) and 1988 (2011) Committees, are summarized as follows:

Part I
Evolving threat of Al-Qaida networks

- The threat of Al-Qaida networks has evolved over the last 10 years. It was emphasized that the operational impact of Al-Qaida's core leadership has

steadily declined since the death of Usama bin Laden in 2011. At the same time, Al-Qaida networks were described as being a much more complex phenomenon with an internationally more diverse range of supporters and active fighters. Unlike the early days, Al-Qaida members are no longer mainly of Arab origin (for example from Egypt or Saudi Arabia). In particular in Somalia (less in Yemen), fighters from many different origins have joined Al-Qaida-related groups.

- A large number of splinter groups have emerged in various countries (many of these have disappeared after a short period of time). In some regions Al-Qaida networks have managed to blend regional or even local issues and interests into the Al-Qaida global agenda in order to increase its appeal.

- It was noted that most groups that claim to be associated with core Al-Qaida leadership still operate fairly independently. It was stressed, however, that Al-Qaida in the Arabian Peninsula seems to be closely integrated into the core Al-Qaida leadership structures.

- It was underlined that Al-Qaida networks did not play any significant role in the recent political processes in Egypt and the Maghreb. This has substantially decreased the appeal of the Al-Qaida message, in particular for younger generations. At the same time, the meeting did not discard the notion that the momentous change taking place in some countries of the region may offer unwelcome new operational niches to Al-Qaida networks in future.

- It was highlighted that Al-Qaida activists are working on rebuilding terrorist structures in Europe. Since the Al-Qaida ideology has broadened its social and ethnic base, including in Europe, there is an increasing danger that individual acts of terror may take place in Europe. It was mentioned that the available information suggests that individuals are currently being trained in Pakistan, Somalia or Yemen so that they will be able to execute "lone-wolf-type plots" in Europe.

Part II
Countering Al-Qaida's threat: enhancing implementation

- Different views were expressed to whether the Security Council should use the Al-Qaida sanctions regime in a "one fits all approach" or whether the Security Council should establish custom-tailored sanctions regimes for each independent group of relevant size and impact.

- The overall impact of sanctions was underscored. However, it was also admitted that it is difficult to assess the accuracy and effectiveness of sanctions. The need for further research in this regard was identified.

- It was emphasized that implementation of sanctions should be further monitored and enhanced through dialogue and cooperation. It was underscored that deficiencies regarding administrative capacities should be identified. The Monitoring Team should play a key role in this field. It should work in close cooperation with the Counter-Terrorism Executive Directorate, which could serve as a system integrator for all activities aiming to enhance capacities with respect to the implementation of targeted sanctions, regardless of any sanctions regime in particular.

- The impact of a splintered Al-Qaida may result in a weaker organizational structure, however, at the same time such entities are more difficult to track since they consist of local groups that will finance themselves locally. Against this backdrop, it was argued that "smart sanctions" must be made even smarter. For future designations of such groups, information exchange should be further enhanced. It was proposed that the Security Council's entities should closely cooperate with international bodies that deal with the same or related subjects (Group of Eight, the Financial Action Task Force, etc.).

- The proposal was made that future mandates should call on all members to establish national focal points to financial actors in the private sector that are implementing the sanctions. Such a national office or focal point should be prepared to answer questions, develop and share best practices, enforce national measures by controlling private enterprises (banks etc.), monitor implementation and reach out to the private sector in order to raise awareness and acceptance.

- Furthermore, a new resolution could encourage Member States to engage in peer reviews designed to evaluate the implementation of sanctions.

- Finally, it was emphasized that, even though Security Council sanctions remain relevant and important, we should not forget other tools at our disposal for countering the evolving threat and the appeal of Al-Qaida ideology. All these measures can and should be mutually reinforcing.

Part III
Office of the Ombudsperson: clarifying standards for review

- The Office of the Ombudsperson provides an important element of fairness to the sanctions regime. This is important for the acceptance of the measures and thus relevant for effective implementation.

- The supremacy of legal reasoning over political considerations was discussed.

- It was stressed that the criteria for listing and standards for review should be transparent and spelled out in greater detail in the resolution that guides the work of the Committee and the Ombudsperson as well as those Member States that are seeking new designations.

- It was argued that the following principles should be enshrined in the future mandate of the Ombudsperson in order to ensure transparency and continuity:

  1. Individuals should be designated for listing if and only if they are knowingly and intentionally associated with Al-Qaida; paragraph 3 of resolution 1989 (2011) should be amended accordingly;

  2. The Ombudsperson should continue to base her recommendation only on information provided to her; by not providing information Member States may inadvertently strengthen the petitioner's position;

  3. Information allegedly obtained under torture or through other illegal means should not be admissible to the process.

  In this context it is important to note that different views on this point were expressed. Some called categorically for the exclusion of such information since admitting information obtained under torture or through any other illegal

means would encourage unlawful methods of inquiry and undermine the credibility of the list and the fight against torture worldwide. Others took a more pragmatic view and argued that such information should be admissible only if a very rigorous standard for assessing the credibility of such information is applied. However, there was agreement that this question of principle merits further consideration.

- Regarding the scope of the mandate, participants questioned why only individuals and entities listed on the Al-Qaida Sanctions List currently have access to the Office of the Ombudsperson.

Part IV
1988 (2011) Afghan-Taliban regime: supporting the Afghan-led political process

- Afghan authorities have continued efforts to establish a political process that should lead to sustainable peace and stability in Afghanistan and beyond. The killing of Professor Rabbani, President of the High Peace Council, was a major setback in this regard. However, current developments provide ground for cautious optimism.

- The split of the 1267 (1999) regime and the establishment of a custom-tailored Taliban sanctions regime (1988 (2011) regime), where Afghan institutions have a special role in the process of listing and delisting, are recognized as important steps towards regaining national sovereignty.

- The decisions of the Committee regarding an Afghan request for the delisting of certain Taliban members in 2011 were welcomed in Kabul as an important measure for building confidence among those members who are listed but willing to engage constructively in a political process towards peace and stability.

- With regard to the political process, procedures for granting exemptions from travel bans will be of particular relevance.

1. If the political process picks up speed, the Committee must be better prepared to respond in a timely fashion to requests for exemptions from the travel ban. If not, the Committee will risk to be perceived as a bottleneck in the peace process and will be held responsible should momentum be lost due to an overly bureaucratic and time-consuming decision-making process within the Committee.

2. In this context, the Afghan authorities would like timelines to be shorter.

3. Furthermore, delegating decision-making on politically relevant requests for exemption to the Chairman of the Committee (as proposed by the Monitoring Team) or to the Special Representative of the Secretary-General (as preferred by the Chair) could be considered when drafting the new mandate in December 2012.